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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL JESUS SARDINHA,

Defendant and Appellant.

H040923

(Santa Clara County

Super. Ct. No. C1365515)

Defendant Manuel Jesus Sardinha appeals from a judgment imposing a two-year prison term following his conviction by no contest plea of burglary and drug-related charges. On appeal, he contends that the trial court abused its sentencing discretion by failing to grant probation because his case was an “unusual” one, within the meaning of Penal Code sections 462 and 1203, subdivision (e)(4), and California Rules of Court, rule 4.413.<sup>1</sup> We cannot find abuse of discretion on the facts before us and therefore must affirm the judgment.

*Background*

Defendant was charged by felony complaint with first degree burglary (Pen. Code, §§ 459, 460, subd. (a)), grand theft of a firearm (Pen. Code, §§ 484, 487, subd. (d)), possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and being under the

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All further references to rules are to the California Rules of Court.

influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a)). The charges arose when defendant broke into his parents' home, pried open the safe, and removed several items, including \$100,000 in cash, keys to a Jaguar, house deeds, banking documents, and jewelry. When defendant was apprehended in his car, police officers found a semiautomatic handgun belonging to one of the victims, three baggies containing 12.2 grams of methamphetamine, and two wallets containing \$38,400 in cash.

Defendant pleaded no contest to the burglary count and the methamphetamine counts, in exchange for an anticipated maximum prison sentence of four years. The trial court imposed a two-year term and dismissed the remaining counts. This appeal followed.

### *Discussion*

#### *1. The Sentencing Hearing*

Defendant was presumptively ineligible for probation under Penal Code section 462, subdivision (a),<sup>2</sup> which proscribes a grant of probation to a person convicted of burglary of an inhabited dwelling house “[e]xcept in unusual cases where the interests of justice would best be served if the person is granted probation.” Also applicable to defendant was section 1203, subdivision (e)(4), which makes a person twice convicted of a felony ineligible for probation, subject to the same exception for unusual cases.<sup>3</sup>

The probation officer recommended denial of probation and the imposition of a two-year prison term, consisting of the lower term of two years for the burglary and a concurrent 16-month term for the possession count. The officer noted defendant’s

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<sup>2</sup> All further statutory references are to the Penal Code.

<sup>3</sup> According to the probation report, defendant had an “extensive” criminal record, including 34 misdemeanors and two felony convictions: attempting to evade a peace officer while driving recklessly (Veh. Code, § 2800.2) and receiving stolen property (§ 496).

“serious issues with drug and alcohol abuse,” his history of violent behavior, his past victimization of his family, and his poor performance in three previous grants of probation. Although defendant informed the probation officer that he had been diagnosed with Attention Deficit Hyperactivity Disorder and Posttraumatic Stress Disorder, the probation officer saw no connection between these diagnoses and his current offenses. Defendant had also shown “little to no progress” in stopping his methamphetamine abuse or reforming his criminal behavior in any other way, but instead “has taken his level of criminality to a higher level and also endangered the community in the process.” Finding no other circumstances overcoming the restriction on probation, the officer concluded that defendant “does not appear ready to change his criminal ways and at this time he represents a serious danger to the victims (his parents) and the community. It is this Officer’s opinion that a state level commitment is warranted at this time to hold the defendant accountable for his continuous disregard for Court directives, his continuous unlawful activity and to protect the victims, their property and the general community from any further acts of violence or unlawful activity by the defendant.”

At the sentencing hearing the prosecutor advised the court that the parents had recovered all of the stolen property, defendant having told the prosecution where the remaining cash and the jewelry were hidden. The prosecutor believed that defendant’s statements to the probation officer were sincere.<sup>4</sup> He disagreed with defendant’s parents, who wanted defendant to serve only one year in jail, but he believed that defendant “really wants to turn this around.” Consequently, the prosecutor initially recommended two years in prison rather than the four years to which the parties had agreed as a maximum. However, after hearing defendant’s mother speak in defendant’s favor and

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Defendant had told the probation officer that he had been “super loaded and insane” when he committed the current offense. He “stressed that he is taking responsibility for his actions” and expressed remorse. Defendant suggested that a probation period of five years rather than three would “assist him to remain sober and law-abiding.”

defendant speak in his own behalf,<sup>5</sup> the prosecutor expressed the belief that a more appropriate sentence for defendant was probation with one year in county jail.

The trial court recognized that probation was unauthorized unless this was an unusual case in which the interests of justice supported an exception. Only in “very rare circumstances,” the court noted, had it ever departed from the parties’ agreed-upon disposition. In this case, however, the court could not follow the recommendation of the parties: “The risk that the People are apparently willing to take the Court is not willing to take. The Court believes that this is not an unusual case where the interest of justice would dictate a grant of probation. Instead based on the extremely serious nature of this particular offense including the substantial amount of money that was involved, the weapon, the flight from the peace officers, the pattern of victimization that the defendant has put upon his parents and others close to him, and the danger that he has posed to the community . . . all lead this Court to believe it is not appropriate to give the defendant a grant of probation.” The resulting sentence was the two-year term that the probation officer and prosecutor had recommended at the outset of the hearing.

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<sup>5</sup> In addressing the court, defendant stated: “After my divorce I wasn’t able to see my children and stuff. And I never tried to hurt anybody. I have a Corvette and Audi and I gave my mom the Jaguar. I had money. It has nothing to do with money. I lost—I lost my mind. I really did. And at the time I thought it was aliens, but I worked really hard for my license and stuff during my marriage and stuff and I did really well. I stopped ’cause in the past I was a bad kid. [¶] And . . . I got married and my ex-wife, she told me that she was pregnant. I completely stop for my daughters and at that time I did everything for my children. And now I’m looking forward to doing for my mom, and my dad, and the higher power, and my children. [¶] So I just needed the drugs actually motivated me to go into different levels for my insanity. I was able to explain it to my brother ’cause my brother is bipolar. My father is bipolar. I didn’t want to be like that. I didn’t think I would ever be like that and I think I am. But the thing is his—I would use drugs to use it for self-medicating and I—but it actually took me to different levels of insanity and that’s when I committed the crime.”

## 2. *The Trial Court's Exercise of Discretion*

Defendant understands the standards by which we review the trial court's denial of probation. When a defendant is by statute ineligible for probation, it is within the trial court's discretion to find that a defendant meets the exception for unusual cases. We review that finding for abuse of discretion. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831; *People v. Stuart* (2007) 156 Cal.App.4th 165, 178.) A defendant "bears a heavy burden when attempting to show an abuse of that discretion" (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282), and abuse will not be found unless the trial court's decision "is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377; *People v. Stuart, supra*, at p. 179.) Absent a clear showing of abuse by the defendant, "the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." (*People v. Superior Court (Du), supra*, at p. 831; *People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1091; cf. *People v. Carmony, supra*, at pp. 376-377.)

Defendant contends that the court "acted in an arbitrary and capricious manner," contrary to the prosecutor's recommendation, by "fail[ing] to consider all of the facts and circumstances of the case." He points out that rule 4.413 allows a court to consider various criteria in deciding whether an exception to statutory ineligibility applies. One of those criteria applies here, he argues, because "[t]he crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation." (Rule 4.413(c)(2)(B).) The prosecutor was sympathetic to this position; he believed that the community would be served "by doing what the system can do to get him on the right track rather than putting him in prison." Defense counsel explained that defendant would be supervised on probation; he was currently taking medication for "mental health issues" and was in a "mental

health[/]domestic violence program.” Defendant also described his use of drugs for self-medication and the adverse effect the drugs had in taking him “to different levels of insanity.”

On appeal, defendant acknowledges that a court is not required to find a case “unusual” even if a rule 4.413 criterion applies. “Under rule 4.413, the existence of any of the listed facts does not necessarily establish an unusual case; rather, those facts merely ‘*may* indicate the existence of an unusual case.’ [Citation.] This language indicates the provision ‘is permissive, not mandatory.’ [Citation.] ‘[T]he trial court may but is not required to find the case unusual if the relevant criterion is met under each of the subdivisions.’ [Citation.]” (*People v. Stuart, supra*, 156 Cal.App.4th at p. 178.)

Defendant further points out, however, that the burglary was of his parents’ home, not that of a stranger, and it occurred when they were on vacation. His mother, a victim of the crime, urged the court to grant probation, and she intended to “try to help him out.” Defendant did not keep all of the stolen property but hid much of it in the house itself, and he expressed remorse at the hearing. In light of the evidence and the comments by the prosecutor, defense counsel, defendant, and his mother, defendant insists that the court’s failure to find this case unusual “was so irrational, no reasonable person would have agreed with it.”

Nevertheless, “if the statutory limitations on probation are to have any substantial scope and effect, ‘unusual cases’ and ‘interests of justice’ must be narrowly construed.” (*People v. Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1229.) Here the court found this to be an “extremely serious” offense, based not only on the circumstances of the offense, the flight, the evasion of the police, and the weapon, but also on defendant’s extensive criminal history. We cannot say that its reasoning evinces an arbitrary or irrational decision. “The question is not whether the court was ‘required’ to act as it did, but whether its ruling was a manifest abuse of discretion.” (*People v. Bowen* (1992) 11 Cal.App.4th 102, 107.) We find no such manifest abuse on the facts presented here, and

therefore cannot interfere with the trial court's finding that defendant's case was not so unusual as to justify a grant of probation notwithstanding his statutory ineligibility.

In light of this conclusion, it is unnecessary to address the parties' debate over the applicability of the factors set forth in rule 4.414. Only if the statutory restriction on probation is overcome does rule 4.413 direct a sentencing court to consider the rule 4.414 criteria—that is, “*if it is*” an unusual case where the interests of justice would be served, “the court should *then* apply the criteria in rule 4.414 to decide whether to grant probation.” (Rule 4.413(b), italics added; see also *People v. Superior Court (Du)*, *supra*, 5 Cal.App.4th at p. 830.) Here defendant has not carried his burden to show error in the court's determination that in the circumstances presented defendant had not overcome his statutory ineligibility for probation. Any issues relating to the application of rule 4.414 are moot.

#### *Disposition*

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.